



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA OFFICE OF THE ATTORNEY GENERAL
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2017-12-0295
DATE: December 29, 2017

After examination and review, Inspector General Staff Attorney Kelly Haltom reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (“IG”) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in Ind. Code 4-2-6 and 42 IAC 1-5 (“Code of Ethics”) or any statute or agency rule concerning conflicts of interests.

On December 20, 2017, the Indiana Office of Attorney General (“OAG”) notified the IG that it wished to enter into a contingency fee contract with Cafferty Clobes Meriwether & Sprengel, LLP (“the Firm”). The OAG’s request explains that since 2012, the State has utilized the Firm to represent the State and local units of government in the consolidated multi-district price fixing litigation *In re Ductile Iron Pipe Fittings Indirect Purchaser Antitrust Litigation: Indiana v. McWane, et. al.* (the “Case”) in the United States District Court for New Jersey.

The OAG first entered into a contingency fee contract with the Firm for purposes of litigating the Case on October 4, 2012. The OAG received the IG's approval to enter into such contract on September 11, 2012. On or about December 5, 2016, due to ongoing litigation of the Case, the OAG amended the contingency fee contract in order to extend it until June 30, 2017. The IG also approved the amendment to the contract on October 31, 2016.

Though the initial contingency fee contract expired on June 30, 2017, the Firm has continued to collect funds on behalf of the State. The purpose of the current proposed contingency fee contract is to memorialize the Firm's uninterrupted representation of the State and to confirm the mutual agreement of the parties in the expired contract regarding contingency fee payments.

Under the current proposed contingency fee contract, the State will compensate the Firm through a contingency fee of approximately 33 $\frac{1}{3}$ percent of any amount recovered up to two million dollars. Thereafter, the Firm will be compensated through a contingency fee between 25 and 5 percent of any part of a recovery that exceeds two million dollars, with such fees not to exceed the maximum percentages permitted by Ind. Code § 4-6-3-2.5(g).

Pursuant to Ind. Code § 4-6-3-2.5(b), the OAG is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code § 4-6-3-2.5(c). The OAG made such a determination and considered all of the factors outlined in the statute.

The OAG's determination explains that it was not cost-effective or in the public's interest for the OAG to undertake the litigation of the Case based upon the complexity of the Case and the lack of sufficient and appropriate resources available to the State to effectively litigate the matter.

The OAG's determination provides that the subject-matter of the Case required an

expertise in federal anti-trust price fixing litigation, something not routinely addressed by the OAG. The OAG's determination also notes that litigation in this Case extended over several years and the OAG did not have sufficient resources available to devote legal staff to this matter on a consistent basis. Moreover, the OAG's determination provides that the litigation of the Case was out of state, for the matter was consolidated in the United States District Court for New Jersey. The OAG's determination further explains that the Firm has continued to provide the necessary legal expertise and resources required to litigate this matter.

Furthermore, Ind. Code § 4-6-3-2.5(d) requires the OAG to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case the OAG, determines in writing that requesting proposals is not feasible under the circumstance. The OAG did not request proposals from private attorneys wishing to provide services on a contingency basis. As noted in the IG's approval for the contingency fee contract with the Firm in 2012, the OAG made a written determination for the original contract with the Firm for representation in the Case that requesting such proposals was not feasible under the circumstances. The OAG recently confirmed in writing that it was still not feasible to request such proposals due to the ongoing representation the Firm has provided in the Case.

After careful examination and review, the IG has determined that the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. According to the OAG, no employee of the OAG or immediate family member of an OAG employee has any ownership interest in the Firm or the contract itself, nor do any of the OAG personnel involved in any of the contracting decisions work at the Firm. Additionally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer, or sole proprietor.

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interest. This Report is issued in compliance with the above noted statutory requirements.

Dated December 29, 2017.

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive style with a long horizontal stroke at the end.

Lori Torres, Inspector General